

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAL ATZIL TARANTO (A98412280),

Plaintiff,

-against-

ALBERTO GONZALES, Attorney General; MICHAEL CHERTOFF, Secretary, Department of Homeland Security; EMILIO GONZALEZ, Director, United States Citizenship & Immigration Services; PAUL NOVAK, Director, Vermont Service Center; ANDREA QUARANTILLO, District Director, New York United States Citizenship & Immigration Services; DEPARTMENT OF HOMELAND SECURITY, UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES

Defendants.

07 Civ. 8133(JSR)

COMPLAINT

ECF Case

Plaintiff Michal Atzil Taranto by her undersigned attorney, alleges as follows:

1. This is an action in the nature of mandamus and for declaratory and injunctive relief to compel final agency action that has been unlawfully withheld and unreasonably delayed for over two years on an application for adjustment of status to lawful permanent residence by an of extraordinary ability and his wife. The action arises under the Immigration & Nationality Act of 1952, as amended (the "Act"), 8 U.S.C. §§ 1101 et seq. and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 et seq. Subject matter jurisdiction is based upon 28 U.S.C. § 1331, 28 U.S.C. § 1337, and 28 U.S.C. § 1361. This Court may grant relief pursuant to the Act, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., and 28 U.S.C. § 1361.

2. Plaintiff Michal Atzil Taranto resides at 2373 Broadway New York, New York within the Southern District of New York with her husband Lee Atzil.

3. Defendant Alberto Gonzales is sued in his official capacity as the Attorney General of the United States. In this capacity he has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, and routinely does and transacts business in the Southern District of New York.

4. Defendant Michael Chertoff is sued in his official capacity as the Secretary of the Department of Homeland Security (“DHS”). In this capacity he has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. §1103 and routinely does and transacts business in the Southern District of New York.

5. Defendant Emilio Gonzalez is sued in his official capacity as the Director of the United States Citizenship & Immigration Services (“USCIS”) within DHS. In this capacity he has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. §1103 and routinely does and transacts business in the Southern District of New York.

6. Defendant Paul Novak is sued in his official capacity as the Director of the Vermont Service Center (“VSC”) of the USCIS. In that capacity, he has responsibility for the adjudication of immigration applications filed with the VSC and routinely does or transacts business in the Southern District of New York by taking or failing to take action that has a substantial impact upon residents of the Southern District of New York.

7. Defendant Andrea Quarantillo is sued in her official capacity as the District Director for the New York office of USCIS and has responsibility for

adjudicating immigration applications referred by the Vermont Service Center (“VSC”) of USCIS.

8. Defendants DHS and USCIS are made party defendants for purposes of obtaining declaratory and injunctive relief pursuant to the APA and the Declaratory Judgment Act.

IMMIGRANT PREFERENCES

9. In general, the Act allocates immigrant visas based upon preferences grounded in family or employment relationships, as described in Section 203 of the Act, 8 U.S.C. §1153. Among those preferences is that in Section 203(b)(1)(A) of the Act, 8 U.S.C. §1153(b)(1)(A) for aliens of extraordinary ability. To establish eligibility for this preference, a preference petition, form I-140, must be filed with the appropriate USCIS service center. The filing of the I-140 establishes the priority date for visa allocation with respect to this preference category.

10. Plaintiff's husband Lee Atzil is the beneficiary of an approved I-140 petition as an alien of extraordinary ability filed May 19, 2004 and approved on March 25, 2005. A copy of the approval notice is attached as Exhibit A.

ADJUSTMENT TO PERMANENT RESIDENCE

11. In the event that the quota for the intended preference category is current, an alien may concurrently file a preference petition and an application to adjustment status to permanent residence based on the preference under Section 245 of the Act, 8 U.S.C. §1255 and may include his or her spouse in the adjustment application as a derivative beneficiary.

12. The adjustment application is filed by the alien on form I-485. In cases of adjustment based upon an employment preference category, the adjustment application is filed with the USCIS service center for the state in which the alien resides. On or about May 19, 2004 the plaintiff and her husband filed applications for adjustment of status with the VSC. Her husband's application was approved on May 11, 2005 and a copy of the approval notice is attached as Exhibit B.

13. To date, despite repeated inquiries, no action has been taken to adjudicate plaintiff's adjustment application. A copy of the receipt notice for her application is attached as Exhibit C. The plaintiff has satisfied all requirements for adjustment of status to permanent residence and her case is now some over a year beyond the reported processing time for such applications as shown by current processing times from the VSC, a copy of which report is attached as Exhibit D. The continuing failure of the defendants to adjudicate plaintiffs' adjustment applications is arbitrary, capricious, an abuse of discretion and contrary to law.

COUNT ONE

14. Paragraphs 1 through 13 above are repeated and realleged as though fully set forth herein.

15. The continuing failure of the defendants to adjudicate the plaintiff's adjustment application violates the Act and the APA, 5 U.S.C. § 555(b), which requires federal agencies to conclude matters with reasonable promptness. Under the APA, 5 U.S.C. § 706(1), this Court has the power to compel agency action unlawfully withheld or unreasonably delayed.

COUNT TWO

16. Paragraphs 1 through 13 above are repeated and realleged as though fully set forth herein.

19. The continuing failure of the defendants to take action required by law is subject to correction by mandamus under 28 U.S.C. § 1361.

WHEREFORE, plaintiff Michal Atzil Taranto demands judgment against the defendants:

(a) Ordering defendants to adjudicate her adjustment application forthwith, and,
(b) Granting plaintiff costs and attorneys fees, and,
(c) Granting plaintiff such other and further relief as this Court may deem just and proper.

Dated: New York, New York
September 4, 2007



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Exhibit A

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797, Notice of Action

U.S. IMMIGRATION AND NATURALIZATION SERVICE

RECEIPT NUMBER EAC-04-170-50808	CASE TYPE I-140
RECEIPT DATE May 19, 2004	PRIORITY DATE May 12, 2004
NOTICE DATE March 25, 2005	PAGE 1 of 1
PETITIONER ATZIL, LEE	
BENEFICIARY A98 412 281 ATZIL, LEE	
Notice Type: Approval Notice Section: Alien of Extraordinary Ability, Sec. 203(b)(1)(A)	
SHANNON HESSEIN ESQ. FRAGOMEN DEL REY BERNSEN & LOEWY P C 515 MADISON AVENUE 18TH FL NEW YORK NY 10022-5403	

The above petition has been approved. The person this petition is for will be notified separately when a decision is reached on his or her pending adjustment of status application.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.



Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE

VERMONT SERVICE CENTER

75 LOWER WELDEN STREET

SAINT ALBANS VT 05479-0001

Customer Service Telephone: (800) 375-5283



Exhibit B

U. S. Citizenship and Immigration Services



RECEIPT NUMBER EAC-04-170-50862		CASE TYPE: I-485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS	
RECEIPT DATE May 19, 2004	PRIORITY DATE May 12, 2004	APPLICANT A98 412 281 ATZIL, LEE	
NOTICE DATE May 11, 2005	PAGE 1 of 1		
SHANNON HESSEON ESQ FRAGOMEN DEL REY BERNSEN & LOEWY 515 MADISON AVE 18TH FLOOR NEW YORK NY 10022		Notice Type: Approval Notice Section: Adjustment as direct beneficiary of immigrant petition COP: E16	

The above application has been approved. The Immigration and Naturalization Service will mail the new alien registration card directly to the applicant in approximately 120 days.

If the new card is not received within this time, please call the office at the number listed below.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
SAINT ALBANS, VT 05479-0001
Customer Service Telephone: (800) 375-5283



Exhibit C

U.S. Citizenship and Immigration Services

THE UNITED STATES OF AMERICA

RECEIPT NUMBER EAC-04-170-50903		CASE TYPE 1485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS
RECEIVED DATE May 12, 2004	PRIORITY DATE	APPLICANT A98 412 280 ATZIL TARANTO, MICHAL
NOTICE DATE May 19, 2004	PAGE 1 of 1	
SHANNON HESSEON ESQ FRAGOMEN DEL REY BERNSEN & LOEWY 515 MADISON AVE 18TH FLOOR NEW YORK NY 10022		Notice Type: Receipt Notice Amount received: \$ 385.00 Section: Derivative adjustment

The above application or petition has been received. It usually takes 365 to 540 days from the date of this receipt for us to process this type of case. Please notify us immediately if any of the above information is incorrect.

We will send you a written notice as soon as we make a decision on this case. You can also use the phone number (800) 375-5283 to obtain case status information direct from our automated system 24 hours a day with a touch-tone phone and the receipt number for this case (at the top of this notice).

If you have other questions about possible immigration benefits and services, filing information, or Immigration and Naturalization Service forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call our TDD at 1-800-767-1833.

You can also visit the INS on the internet at www.bcis.gov. On our web site you can get up-to-date case status information on your case and find valuable information about immigration services and benefits.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

SEE THE ADDITIONAL INFORMATION ON THE BACK. TO
IMMIGRATION & NATURALIZATION SERVICE

IMMIGRATION & NATIONALITY
VERMONT SERVICE CENTER

VERMONT SERVICE CENTER
75 LOWER WELDEN STREET

73 LOWER WEEDEN STREET
SAINT ALBANS VT 05479-0001

Customer Service Telephone: (800) 375-5283



Exhibit D


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U.S. Citizenship and Immigration Services Vermont Service Center Processing Dates Posted August 15, 2007

Notice: U.S. Citizenship and Immigration Services (USCIS) has improved the reporting procedure for processing times of immigration benefit applications. In the past, USCIS benefit processing reports indicated the specific type of applications or petitions that were being processed and the date the cases were received. However, the date the case was received did not provide a clear indication of when USCIS expected to complete the case, nor did it provide a clear indication of USCIS' commitment to process cases within a certain cycle time. It also did not align with the processing times and cycle times the agency reports in other contexts.

This improved reporting procedure is an effort to give our customers more accurate information that better reflects current processing time and USCIS service level commitments. Effective immediately, when we are completing applications and petitions within our service level goals we will report the USCIS service level commitment. For example, when our service level goal is to process a particular kind of case within six months, and if our processing time is six months or less, we will show "6 months".

When we are not meeting our service level goal, the date posted will reflect the filing date of cases that are being completed. It should be noted that while in some instances reported processing dates may appear to have regressed due to this change, they do not reflect a lengthening of USCIS processing times, but simply the change in reporting. Our goal is to provide accurate projections and thus give customers clear expectations as to what they can expect as a processing time.

There are several important exceptions to the processing times shown below:

- Case processing will be delayed if we must ask you for more evidence or information. If we ask for missing required initial evidence, count the processing time from when we receive that missing evidence.
- The case processing timeframe will start over if a customer doesn't appear for an interview or asks that it be rescheduled.

What if I have a problem or have questions about a case?

We offer a variety of services after you file. For example, for most kinds of cases you can check the status of your case online.

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our fact sheet –

Case Services - How do I... know what kind of services are available to me after I file my application or petition?

One additional point about these projections. They are the time to complete processing and mail the actual notice and/or document. If you check case status online and see that your case has been approved, and you haven't yet received your approval notice or document in the mail, we ask that you wait thirty days from the approval date before contacting us. That is because it may take that long before it is returned to us as undeliverable. You can also print the case status online answer for your records.

Service Center Processing Dates for Vermont Service Center Posted August 15, 2007

Form	Title	Classification or Basis for Filing	Processing Timeframe
I-90	Application to Replace Permanent Resident Card	Initial issuance or replacement	July 31, 2006
I-90A	Application to Replace Permanent Resident Card	Initial issuance or replacement for Special Agricultural Workers (SAW)	August 04, 2005
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	Initial issuance or replacement of a Form I-94	3 Months
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Visa to be issued abroad	2 Months
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Change of status in the U.S.	2 Months
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Extension of stay in the U.S.	April 02, 2007
I-129	Petition for A Nonimmigrant Worker	H-2A - Temporary workers	15 Days
I-129	Petition for A Nonimmigrant Worker	H-2B - Other temporary workers	30 Days
I-129	Petition for A Nonimmigrant Worker	H-3 - Temporary trainees	2 Months
I-129	Petition for A Nonimmigrant Worker	L - Intracompany transfers	30 Days
I-129	Petition for A Nonimmigrant Worker	Blanket L	2 Months
I-129	Petition for A Nonimmigrant Worker	O - Extraordinary ability	2 Months
I-129	Petition for A Nonimmigrant Worker	P - Athletes, artists, and entertainers	2 Months
I-129	Petition for A Nonimmigrant Worker	Q - Cultural exchange visitors and exchange visitors participating in the Irish Peace process	2 Months
I-129	Petition for A Nonimmigrant Worker	R - Religious occupation	2 Months
I-129	Petition for A Nonimmigrant Worker	TN - North American Free Trade Agreement (NAFTA) professional	May 14, 2007
I-129F	Petition for Alien Fiance(e)	K-1/K-2 - Not yet married - fiance and/or dependent child	6 Months
I-130	Petition for Alien Relative	U.S. citizen filing for a spouse, parent, or child under 21	January 31, 2007
I-130	Petition for Alien Relative	U.S. citizen filing for an unmarried son or daughter over 21	July 02, 2006
I-130	Petition for Alien Relative	U.S. citizen filing for a married son or daughter over 21	June 04, 2006
			February 05,

I-130	Petition for Alien Relative	U.S. citizen filing for a brother or sister	2001
I-130	Petition for Alien Relative	Permanent resident filling for a spouse or child under 21	January 08, 2006
I-130	Petition for Alien Relative	Permanent resident filling for an unmarried son or daughter over 21	June 04, 2006
I-131	Application for Travel Document	All other applicants for advance parole	3 Months
I-140	Immigrant Petition for Alien Worker	Extraordinary ability	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Outstanding professor or researcher	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Multinational executive or manager	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Schedule A Nurses	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Advanced degree or exceptional ability	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Advanced degree or exceptional ability requesting a National Interest Waiver	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Skilled worker or professional	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Unskilled worker	April 01, 2006
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	Readmission after deportation or removal	June 04, 2006
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	Violence Against Women Act (VAWA)	October 23, 2006
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	All other special immigrants	June 07, 2006
I-485	Application to Register Permanent Residence or to Adjust Status	Employment-based adjustment applications	July 24, 2006
I-539	Application to Extend/Change Nonimmigrant Status	Change of status to H or L dependents	April 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Change status to the F or M academic or vocational student categories	April 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Change Status to the J exchange visitor category	April 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	All other change of status applications	April 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of stay for H and L dependents	April 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for F or M academic or vocational students	April 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for J exchange visitors	April 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	All other extension applications	April 09, 2007
I-612	Application for Waiver of the Foreign Residence Requirement	Application for a waiver of the 2-year foreign residence requirement based on exceptional hardship or persecution	October 07, 2006
		Removal of lawful permanent resident	

I-751	Petition to Remove the Conditions on Residence	conditions (spouses of U.S. citizens and lawful permanent residents)	January 03, 2007
I-765	Application for Employment Authorization	Based on a request by a qualified F-1 academic student. [(c)(3)]	11 Weeks
I-765	Application for Employment Authorization	Based on a pending asylum application [(c)(8)]	30 Days
I-765	Application for Employment Authorization	Based on a pending I-485 adjustment application [(c)(9)]	11 Weeks
I-765	Application for Employment Authorization	Based on TPS for Honduras/Nicaragua [(c)(19), (a)(12)]	11 Weeks
I-765	Application for Employment Authorization	Based on TPS for El Salvador [(c)(19)(a)(12)]	11 Weeks
I-765	Application for Employment Authorization	All other applications for employment authorization	11 Weeks
I-817	Application for Family Unity Benefits	Voluntary departure under the family unity program	December 29, 2005
I-821	Application for Temporary Protected Status	El Salvador initial or late filing	July 01, 2006
I-821	Application for Temporary Protected Status	El Salvador extension	July 01, 2006
I-821	Application for Temporary Protected Status	Honduras and Nicaragua initial or late filing	July 01, 2006
I-821	Application for Temporary Protected Status	Honduras and Nicaragua extension	July 01, 2006
I-824	Application for Action on an Approved Application or Petition	To request further action on an approved application or petition	6 Months
N-600	Application for Certification of Citizenship	Application for recognition of U.S. citizenship	6 Months
N-643	Application for Certification of Citizenship on Behalf of an Adopted Child	Application for recognition of U.S. citizenship on behalf of an adopted child	6 Months

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